

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FLOSPORTS, INC.

v.

WWN, INC.

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Civ. No. 1:17-cv-1043-LY

DECLARATION OF TOBY MERGLER

STATE OF TEXAS

COUNTY OF TRAVIS

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I, Toby Mergler declare:

1. My name is Toby Mergler. I am over the age of eighteen (18) years. My address is 4805 Shoalwood Ave., Austin, Texas 78756. I am of sound mind and have personal knowledge of the facts stated herein, which are all true and correct.
2. Until August 2017 I served as Vice President of Global Rights Acquisition for FloSports.
3. WWN began communicating with FloSports regarding a potential live-streaming and advertising agreement in August 2016. Through such an arrangement, WWN could gain greater visibility, accessibility, and advertising of its events and products from FloSports, a sports media company that offers direct-to-consumer subscriptions of its live internet broadcasts as well as regular cash payments. When we began discussing a deal with WWN, I met with Gabe Sapulsky from WWN in Boston. Mr. Sapulsky lives in the northeast.
4. That meeting led to a phone conversation with Sal Hamaoui, WWN's CEO. I discussed WWN's viewership numbers with Mr. Hamaoui, and asked him to send me those numbers, which would serve as the basis for a deal.
5. Sal Hamaoui sent me a spreadsheet of viewership via email. I received the spreadsheet and took the call in Austin, Texas, where I formulated the proposal that ultimately became the parties' agreement.
6. In October 2016, Mr. Hamaoui came to Austin, Texas to meet and discuss the proposal. I walked him through FloSports' current headquarters on Cesar Chavez and drove by the potential new headquarters on Tillery Street. We discussed the viewership data and contract terms, drove around Austin and ate lunch here in Austin.

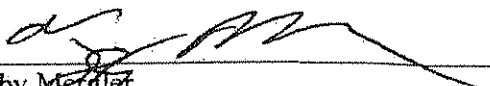
EXHIBIT

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7. Afterwards, Mr. Hamaoui began driving to San Antonio to meet some friends but then he called me and said, "I've talked to Gabe, and we are ready to sign." Mr. Hamaoui turned his car around and came back to our Austin offices where he signed the contract.
8. We then went next door to Lustre Pearl where Nick Schenck and Phil Wendler from FloSports joined us for a celebratory drink.
9. To my knowledge, no FloSports employee ever went to WWN's Florida offices. We never negotiated any terms of the agreement in Florida. To my knowledge, FloSports performed its advertising, streaming, and all other contractual services from its headquarters in Austin, Texas.

I declare under penalty of perjury on this 27th day of November, 2017, that the foregoing is true. Signed at Austin, Texas.



Toby Metzler